

# **EXHIBIT 40**

**From:** [Murphy, Michael D.](#)  
**To:** [Beral, Arash](#); [Malynn, Todd M.](#)  
**Cc:** [Zollicoffer, Jordan](#); [James, Pauletta](#); [Kozak, Lori S.](#)  
**Subject:** Re: Meet and Confer items  
**Date:** Tuesday, March 25, 2025 10:04:56 AM  
**Attachments:** [PHOTO-2025-03-23-05-09-00.jpg](#)

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Arash:

I had an unexpected family issue take me offline yesterday afternoon. Although it was interrupted by a flurry of attention regarding the attached which was found on Instagram yesterday. For those two reasons I was not able to prepare out filing. We have had to investigate the latter, which we are still doing.

Since we have a filing to prepare, as per Judge Blumenfeld's Order of this morning, I will be drafting that, and raising the below. I would like an explanation of this by noon. I am disappointed that this shows up on Instagram after I stick my neck out and advise that I believe the active contempt has finally ceased.

Accordingly, I request that you explain the attached, and explain why I should not argue that the ruling that your client was in contempt of the past now appears to fit in that category of mootness exceptions wherein some wrongdoing has ceased, but is likely to repeat. Why is this not proof that a special master is required, given that we have to spend our time monitoring everything. How is this not contempt? Given Ms. Grudnowsky's testimony has to how the social media aspect of compliance was the first?

This is of course, putting aside the separate problem that we will have to meet and confer about which is that your client's operations still look like potato corner in every way, except the trademarks, and the fixture signs are still up. You are clearly attempting to pawn off the brand. But that is a discussion for another day

Thank you,

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**From:** Beral, Arash <arash.beral@blankrome.com>  
**Sent:** Monday, March 24, 2025 9:34:19 PM  
**To:** Murphy, Michael D. <mdmurphy@foxrothschild.com>; Malynn, Todd M. <Todd.Malynn@BlankRome.com>  
**Cc:** Zollicoffer, Jordan <JZollicoffer@foxrothschild.com>; James, Pauletta <PJames@foxrothschild.com>  
**Subject:** [EXT] RE: Meet and Confer items

Mike:

Still haven't heard back from you on any of the below emails, including the attorney's fees stuff. As a reminder, on Thursday, you asked to continue the fees stuff and I said that would be fine. I trust that you are handling the filing of a statement with the Court tonight.

Arash

**Arash Beral** | BLANKROME  
2029 Century Park East | Los Angeles, CA 90067  
[L](#)

**From:** Beral, Arash  
**Sent:** Monday, March 24, 2025 2:39 PM  
**To:** Murphy, Michael D. <mdmurphy@foxrothschild.com>; Malynn, Todd M. <Todd.Malynn@BlankRome.com>

**Cc:** Zollicoffer, Jordan <JZollicoffer@foxrothschild.com>; James, Pauletta <PJJames@foxrothschild.com>

**Subject:** RE: Meet and Confer items

Mike:

We were disappointed that we didn't hear from you on Friday. You didn't send your document production either. I really don't understand why we must be confronted with these accusatorial, unnecessary emails, which you know are untrue or misleading. I don't get it. I thought we had turned the page.

**Please arrange a time to discuss all issues – yours and ours – with Todd either today or tomorrow.** I'm completely slammed on other matters. I've been in Court with a client all morning, which hearing bled into the lunch hour, and I just got back a little while ago to have these long emails from you to address. I have other urgent matters to tend to this afternoon and I'm back in Court tomorrow. It would have helped for you to identify all your issues in advance so that I could review and give my input to Todd before you meet with him. That opportunity being wasted, quickly pointing out:

1. I am confused by the accusation about our request for you to identify the issues before a meet and confer; we made a customary request. Again, we want to have time to evaluate your positions and authorities so that we could have a meaningful discussion with you; we've made this request multiple times. You not only have requested that we send meet and confer letters to you in the past, but we have prepared one in advance of each of our requested meet and confers (which we have had many) in this case. You could have just helped us by identifying the issues, but elected not to. That's fine. Todd will discuss with you, take copious notes, and then discuss your issues with me. He will also discuss our issues as well.
2. I am also confused about your "reversing tires 180 degrees" comment. I don't know what that means, but I assume you're suggesting that we changed positions. We never did. My memory is that we complained in November about your amended pleading, which added claims and parties without leave of court, and you essentially opposed any suggestion at a continuance of the deadlines (not trial date, but deadlines). Then the Court dealt with the deadlines issue (again, not trial date, but deadlines) in a footnote in one of its Orders. We chose not to file a motion to amend the CMO, but to stay on track with all deadlines and trial date – and any time the matter came up, you would not commit anyway. And we've heard Judge Blumenfeld say time and time again that dates are firm; in fact, you and I had this discussion in Court – we said that Judge Blumenfeld is not likely to change any dates. I made a proposal to you to stay this case pending the Ninth Circuit ruling and you refused that. Thus, our side fully complied with the Scheduling Order, as we were and are required to do. We're not going to prejudice our clients to give you a renewed discovery phase, or to designate experts after you've seen our designation, or otherwise renew the waived MSJ dates, etc. The Counterclaim/TPC does not change the analysis either – nothing in there enlarged the scope of discovery; all the issues were addressed in the early motion to dismiss and injunction papers (at least, if not addressed by the preceding state court litigation) and you've had plenty of time to do discovery on the subject matters. Nothing is new. We also offered you depositions in the past and you elected not to do any.
3. Plaintiff currently is in violation of the Magistrate Judge's Order, requiring the production of documents to the first set of document requests last week, including documents you represented you had already gathered. We have not refused to meet and confer on search terms. The search term issue was separate from the agreed-upon initial production you were to make last week. It concerned a follow-up production in accordance with the Order. You agreed to provide a list of search terms to us (which you have not done) so we could comment on them. It was agreed that the initial production would give us insight as to relevant custodians of record to enable us to provide informed comments. You have now deprived us of the ability to so make informed comments on search terms by hiding them from us and refusing to make the initial production of core relevant documents already gathered. You seem to be holding this issue hostage because we objected – appropriately

– to your untimely discovery requests.

Best,

Arash

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**From:** Murphy, Michael D. <[mdmurphy@foxrothschild.com](mailto:mdmurphy@foxrothschild.com)>  
**Sent:** Monday, March 24, 2025 8:53 AM  
**To:** Beral, Arash <[arash.beral@blankrome.com](mailto:arash.beral@blankrome.com)>; Malynn, Todd M. <[Todd.Malynn@BlankRome.com](mailto:Todd.Malynn@BlankRome.com)>  
**Cc:** Zollicoffer, Jordan <[JZollicoffer@foxrothschild.com](mailto:JZollicoffer@foxrothschild.com)>; James, Pauletta <[PJames@foxrothschild.com](mailto:PJames@foxrothschild.com)>  
**Subject:** RE: Meet and Confer items

Arash:

**#1 Our Rule 12 Motion:** Nothing in the Local Rules allows you to condition a meet and confer under LR 7-3 on a written submission preceding even the setting of the meet and confer. You are forcing me to waste my client's money on fees. You are correct I have asked for this in the past from you, but have never conditioned a meet and confer on this. Please identify a date over the next two days to conduct this meet and confer that I have been asking for over a period of nearly two weeks. Should you decline to do so, I will withdraw my offer to accept service upon simply delivering the summonses to my email for the three new defendant.

Regarding the basis for our Rule 12 Motion, it is quite simple, the entire pleading is fatally flawed and must be dismissed.

- a. As for the affirmative defenses which SPAVI will seek to have adjudicated on the pleadings: they are either pled with insufficient specificity, or they do not exist. Failure to state a claim, for example, is not an affirmative defense. Full faith and credit, while it can be an affirmative defense, has to at least identify some factual basis. Each of your affirmative defenses, with few exceptions, are faulty. You should read the CD Cal. Case Rosen (attached), as it is quite illuminating
- b. As for the claims in the counter claim and third party complaint, I think with few exceptions, not one of the elements of any claim is supported by any allegations
  - i. For Cinco: what is the contract it is bound to? The AJVA supersedes the JVA and Cinco is not a party. What is the source of Cinco's supposed fiduciary duties? What is the relationship from which that supposed fiduciary duty arises? It is not a member, of PCJV, it is not a signatory to the AJVA. A licensor owes no fiduciary duties. Can you find one single authority that confers such a duty in this context?
  - ii. For SPAVI: each of the claims sound in interference. What specifically is the act of SPAVI that interfered with contract / business expectancy. You don't ever actually allege that. And what is the specific contract provision being interfered with? What is the wrongful act of SPAVI (as you know this is a requirement for the business expectancy claims).
  - iii. For the Singapore entity and SPAVI US Third Party Defendants: you fail to allege a single fact that would establish a controversy. Not one.



- c. Given the above, you should just dismiss the counter claim and third party claim. In fact, we urge you to rethinking this entire pleading (the Answer and Counterclaim and Third Party Claim) and dismiss the entire thing as we believe, and are now likely to pursue dismissal under FRCP Rule 11. Each of the four subsections of FRCP 11(b) have been triggered. The best evidence of the absence of any evidence, legally tenable arguments, and for your improper purpose for both the claims and affirmative defenses, is that you made no effort in this pleading to acknowledge this same Court's analysis in the Injunction Order that addresses three arguments on point, and attempt to identify facts that would defeat those arguments. This is a concession that you know you have no legal or factual argument around the Court's analysis, which sent your claims into preliminary defeat, indicating that you know you will lose again.

**#2 Scheduling Order:** I request you rethink this new position, reversing tires 180 degrees announced, for the first time in response to this email at the end of last week. Putting aside the record (which shows you asking for this, us agreeing to this, the Court recommending this, and you never once saying you have changed your mind until this email sent last week, there are a lot of things that undermine your newly changed position. First, the fact that you served your Rule 26 disclosures so late you made it impossible for us to use those as a basis and framework for discovery, effectively undermining Rule 26 in this case entirely. Second, do you really think the judge is going to tell Cinco, the Singapore entity, and SPAVI US that they get no discovery, no Rule 26 disclosures? Nothing? I think these three points alone will be difficult to explain to the Court. Accordingly, by forcing us to waste the fees to prepare an Ex Parte application is, in our opinion, nothing more than another way to force our client to waste more fees and time. Let's avoid all of that, and just work up a new calendar to propose.

**#4 Documents.** I tried to meet and confer with you on search terms, which are better decided now. You refused. I also asked for a courtesy on time for other discovery responses, in part so I could get this production rolling, and you refused. This forced me to drop everything and work on this. At a certain point, the refusal by your side to extend many courtesies whatsoever is beginning to look like your substantive strategy. We will begin producing this week. I am very sorry about how you have decided to degrade the baseline of basic courtesies extended between attorneys. Especially when I have given you every single extension you have asked for. Everyone.

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**From:** Beral, Arash <[arash.beral@blankrome.com](mailto:arash.beral@blankrome.com)>

**Sent:** Thursday, March 20, 2025 8:40 PM

**To:** Murphy, Michael D. <[mdmurphy@foxrothschild.com](mailto:mdmurphy@foxrothschild.com)>; Malynn, Todd M. <[Todd.Malynn@BlankRome.com](mailto:Todd.Malynn@BlankRome.com)>

**Cc:** Zollicoffer, Jordan <[jZollicoffer@foxrothschild.com](mailto:jZollicoffer@foxrothschild.com)>; James, Pauletta <[PJames@foxrothschild.com](mailto:PJames@foxrothschild.com)>

**Subject:** [EXT] RE: Meet and Confer items

Mike:

I'm going on a 12+ hour day here and my eyes are glazing over. I'm also in depositions or hearings every day over the next couple weeks with multiple trials coming up. I'll try to connect with Todd tomorrow to see when he's available to confer and also with the clients over the weekend. My quick comments are below since you requested a response today:

First, #3 is fine.

As to #1, please specifically identify the issues you want to confer about so that we can study it before a meeting. I think Todd has asked for this already.

As to #2, I personally don't think your proposal makes sense for our clients. We've been diligently complying with the Case Management Order and we did not file a request for an extension of the CMO either. Since your side didn't address our extension request back in November/December, we treated the CMO to be final especially given its language that it should be treated as being final, as well as Judge Blumenfeld's admonitions to other parties in other cases each time we appeared in Court that dates are final. And certainly, at this late juncture, you can't expect us to prejudice our clients with wholesale revisions to the CMO which would essentially enable you to hit the reset button on waived percipient discovery deadlines, expert discovery deadlines, MSJ deadlines, etc. Moreover, every day of delay with a preliminary injunction hanging over our clients' heads is prejudicial (not to mention almost all of PCJV's franchisees now claiming to "rescind"); our clients want to vindicate their rights ASAP. That said, I will discuss your proposal with our clients and if they wish to agree to it or have a counter-proposal, I will let you know.

Re: #4, SPAVI is required to produce documents this week. It's already been months that we've been chasing this down. We trust that you will comply with the Magistrate Judge's Order and produce documents tomorrow. In addition, SPAVI is to provide the search terms it is using to ensure that it has gathered all responsive documents subject to the limitations stated in the Order. We cannot delay any further, especially when the discovery motion hearing deadline is April 11. Please comply. As to our written request last Friday to meet and confer over SPAVI's discovery responses as to our second set of discovery requests, this must also be brought to the Magistrate Judge's attention ASAP given the April 11 deadline. I will ask Todd to propose a joint agenda on that tomorrow.

Best,

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**From:** Murphy, Michael D. <[mdmurphy@foxrothschild.com](mailto:mdmurphy@foxrothschild.com)>  
**Sent:** Thursday, March 20, 2025 3:04 PM  
**To:** Beral, Arash <[arash.beral@blankrome.com](mailto:arash.beral@blankrome.com)>; Malynn, Todd M. <[Todd.Malynn@BlankRome.com](mailto:Todd.Malynn@BlankRome.com)>  
**Cc:** Zollicoffer, Jordan <[jZollicoffer@foxrothschild.com](mailto:jZollicoffer@foxrothschild.com)>; James, Pauletta <[PJames@foxrothschild.com](mailto:PJames@foxrothschild.com)>  
**Subject:** Meet and Confer items

Arash and Todd:

1. **Pleading Challenges: Please advise today** as to three times you can meet and confer with Jordan and I regarding a Rule 12 Motion and Motion for Judgment on the Pleadings on behalf of SPAVI, SPAVI US, Cinco, and the Singapore entity. The Motion will be challenging each of the causes of action in the





<b>Post-Settlement Status Conf.</b> (Fri., 8:30 a.m.):	May 23, 2025	October 24, 2025
Joint Status Report Due (7 days before <i>by 9:00 a.m.</i> ):	May 16, 2025	October 17, 2025
<b>Trial Filings (First Set) Deadline</b>	June 20, 2025	November 21, 2025
<b>Trial Filings (Second Set) Deadline</b>	July 7, 2025	December 8, 2025

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[\[1\]](#) A motion seeking or opposing further nonexpert discovery must be heard on or before the nonexpert discovery deadline.



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